

Briefing

13 September 2017

Proposed changes potentially relaxing the structuring of group financings in Romania

Companies Law no. 31/1990 may be subject to several amendments, part of a complex legislative process aimed at updating the legal framework on distribution of dividends by companies. A draft amendment (“**Draft Amendment**”) has been already adopted by the Senate and is subject to further debate and approval by the Chamber of Deputies (the decisional chamber).

In addition to the regulation of the dividends framework, the Draft Amendment also repeals two criminal offences currently provided by the Companies Law that have caused many concerns over the years when structuring lending transactions which included certain forms of upstream, downstream and/or cross-stream guarantees and financings (such as cash pooling or secured lending transactions):

- the use in bad-faith of the credit of the company by company’s founder, director, general manager, manager, member of the directorate or of the supervisory board, or legal representative (art. 272(1)(b) of the Companies Law); and
- the lending to a director or the above-mentioned persons/ entities by the company with an amount exceeding EUR 5,000 or procuring the company to grant a guarantee of their own debts (art. 272(1)(c) of the Companies Law).

Draft Amendment would reduce certain restrictions in relation to structuring secured lending transactions which envisage, for example, granting upstream or cross-stream security interests and corporate guarantees by limited liability companies or granting security interests or corporate guarantees by limited liability companies to other companies which have common directors.

Of course, although apparently simplified, structuring a secured lending transaction would remain a complex exercise subject to several restrictions as the Companies Law is aimed at protecting the companies’ assets.

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